

Remarks

In response to the Office Action mailed October 18, 2007, Applicants request reconsideration of this application in view of the following remarks.

Claims 1-4 and 6-9 are stand rejected. Claims 10-23 are withdrawn. The Examiner is thanked for the indication of allowability for the subject matter of claim 5.

Examiner's Interview

The undersigned attorney thanks the Examiner for the courtesies extended during the telephone interview on December 6, 2007. During the interview, the pending claims and the cited Krom reference were discussed. The Examiner agreed to consider applicant's declaration and supporting documentation that asserts that the 1,2 microstructure control agents of Krom do not functionalize the polymers to which they are applied-to. The remarks contained herein further summarize the interview.

§ 102 Rejection over Krom

Claims 1-4 and 6-9 were rejected under 35 U.S.C. 102(b) over U.S. Pat. No. 6,437,050 to Krom. This rejection is traversed.

Despite applicants arguments to the contrary, in the Final Office Action, the Examiner maintained that Krom teaches a functional group associated with the outer layers of the nanoparticle. Column 4, lines 34-63 was specified as teaching this limitation of the claims. As explained before, this passage of Krom deals with microstructure control agents. These agents do not functionalize the outer layer of the nanoparticle. As discussed in the telephone interview, CLI-1575953v1

the fact that microstructure control agents do not functionalize polymers is supported by the declaration under 37 C.F.R. § 1.132 filed herewith and the supporting documentation attached thereto.

Accordingly, Krom does not teach a functional group associated with the outer layers of the nanoparticle. The Examiner's allegation that microstructure control agents functionalize the polymers to which they are applied is unsupported by any evidence. However, such allegations cannot be made without support. See, e.g., MPEP § 2144.03(A) ("assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory.')." With submission of the accompanying declaration and attachment, the only evidence of record contradicts the Examiner's allegations. Thus, claim 1 and its dependent claims are neither anticipated nor made obvious by Krom.

Applicants submit that claims 1-9 are now in condition for allowance. The Examiner is respectfully requested to enter this Response and pass this case to issue.

Respectfully submitted,

JONES DAY

A handwritten signature in black ink, appearing to read 'Nathan T. Lewis', written over a horizontal line.

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